

Message Text

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ACTION EA-09

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P 210603Z JUL 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2617

SECDEF WASHDC

DEPTJUSTICE WASHDC PRIORITY

CSAF JACI PRIORITY

CINCPAC/JA PRIORITY

CINCPACAF/JA

CINCPACREPPHIL/JA PRIORITY

13AF CLARK JAI PRIORITY

3CSG CLARK/JAI

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JUSTICE FOR RISTAU, FOREIGN LITIGATION UNIT

E.O. 11652: N/A

TAGS: MILI, RP

SUBJECT: NUGUID VS GAINES, ETA AL (CIVIL SUIT)

REF: 3CSG MSG 29/0844 JUN 77 (NOTAL)

1. ON 20 JULY 1977, EMBASSY RECEIVED DEPARTMENT OF FOREIGN AFFAIRS NOTE NO. 77-2135, DATED 15 JULY 1977, FORWARDING SUMMONS ADDRESSED TO USG C/O EMBASSY AND COMPLAINT REPORTED REFTEL. ALSO ATTACHED WERE: QUOTE - MOTION TO OBTAIN CONSENT TO BE SUED ADDRESSED TO THE UNITED STATES GOVERNMENT END QUOTE AND TWO COURT ORDERS NOT PREVIOUSLY RECEIVED.

2. MOTION RECITES THAT:

QUOTE - ...PURSUANT TO EXISTING AND ACCEPTED PRINCIPLES
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OF INTERNATIONAL LAW WHICH WERE ADOPTED AS PART OF THE LAW OF THE LAND, WHENEVER A SUIT IS BROUGHT AGAINST A FOREIGN GOVERNMENT IN THE PHILIPPINES, THE CONSENT OF SAID GOVERNMENT MUST BE OBTAINED THROUGH PROPER MOTION;
THAT IT HAS BEEN ALLEGED BY THE AUTHORITIES AT CLARK AIR FORCE BASE THAT DEFENDANT SGT. JOSEPH GAINES WAS IN THE PERFORMANCE OF HIS OFFICIAL DUTIES FOR THE

UNITED STATES GOVERNMENT AT THE TIME WHEN THE INCIDENT
COMPLAINED OF OCCURED. END QUOTE
MOTION THEN CITES SOME NOT PARTICULARLY APPLIABLE
AUTHORITY FOR THE PROPOSITION THAT THE DEFENSE OF
OFFICIALS ACTS IS INAPPLICABLE AND CONCLUDES RECITATION
AS FOLLOWS:

QUOTE - THAT BECAUSE OF THE ATTENDANT CIRCUMSTANCES
IN THE CASE AND PURSUANT TO THE WIDELY PUBLICIZED HUMAN RIGHTS
POLICY OF THE UNITED STATES GOVERNMENT AND ITS ADVOCACY FOR
JUSTICE AND FAIRNESS, IN CONTRAST WITH COMMUNISTIC
SYSTEM OF JUSTICE, IT IS EXPECTED THAT THE UNITED STATES
GOVERNMENT WILL GIVE ITS CONSENT CONSIDERING THAT DAMAGES
WERE ACTUALLY SUFFERED AND THE CASE WILL BE DECIDED ON
ITS MERITS BY PHILIPPINES COURTS; AND

THAT THE UNITED STATES GOVERNMENT EXPRESSLY RECOGNIZED
THE RIGHT OF VICTIMS OR OFFENDED PARTIES TO FILE CIVIL
CASES IN PHILIPPINE COURTS IN EVERY CASE IN WHICH THE
JURISDICTION OVER THE OFFENSE IS EXERCISED BY THE UNITED
STATES AS PROVIDED FOR IN ARTICLE XIII, PARAGRAPH 8
OF THE BASES AGREEMENT. END QUOTE

3. THE FIRST ORDER DENIES THE MOTION TO OBTAIN CONSENT
TO BE SUED BUT GOES ON PARENTHETICALLY:

QUOTE - (HOWEVER, PURSUANT TO CIRCULAR NO. 47 OF
THE SECRETARY OF JUSTICE, DATED AUGUST 5, 1973, THE
COURT HEREBY ORDERED THAT THE PROCESSES OF THIS COURT,
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INSOFAR AS THE U.S. GOVERNMENT IS CONCERNED SHALL BE
COURSED DIRECTLY TO THE DEPARTMENT OF FOREIGN AFFAIRS
FOR TRANSMITTAL TO THE UNITED STATES EMBASSY.) END QUOTE

4. THE SECOND ORDER STATES THAT THE COURT:

QUOTE -...GRANTS THE SAID PRAYER FOR PRELIMINARY
ATTACHMENT INSOFAR AS THE DEFENDANT JOSEPH GAINES IS
CONCERNED, AND ORDERS THAT A WRIT OF PRELIMINARY
ATTACHMENT ISSUE AGAINST THE CHATTELS AND GOODS OF THE
SAID DEFENDANT JOSEPH GAINES WHICH ARE NOT EXEMPT FROM
EXECUTION AFTER THE PLAINTIFF SHALL HAVE FILED A BOND
IN THE AMOUNT OF 50,000 PESOS. END QUOTE

5. TO AVOID CONFUSION, EMBASSY BELIEVES RESONSE ALONG
FOLLOWING LINES WOULD BE APPROPRIATE:

QUOTE - THE MOTION OT OBTAIN CONSENT TO BE SUED
ADDRESSED TO THE UNITED STATES GOVERNMENT CONTAINS
THE FOLLOWING LANGUAGE: "...PURSUANT TO EXISTING AND
ACCEPTED PRINCIPLES OF INTERNATIONAL LAW WHICH WERE
ADOPTED AS PART OF THE LAW OF THE LAND, WHENEVER A SUIT
IW BROUGHT AGAINST A FOREIGN GOVERNMENT IN THE
PHILIPPINES, THE CONSENT OF SAID GOVERNMENT MUST

BE OBTAINED THROUGH PROPER MOTION..."

IN THIS REGARD THE EMBASSY HAS THE HONOR TO
INFORM THE DEPARTMENT OF FOREIGN AFFAIRS THAT THE
UNITED STATES GOVERNMENT DOES NOT GIVE ITS CONSENT
TO BE SUED IN THIS CASE AND REQUESTS THE DEPARTMENT
TO SO NOTIFY THE HONORABLE COURT OF FIRST INSTANCE
OF PAMPANGA AND ANGELES CITY, BRANCH IV. END QUOTE

6. AS TO INDIVIDUALLY NAMED DEFENDANTS, EMBASSY
BELIEVES USE OF OFFICIAL ACTS DEFENSE WOULD
BE SUCCESSFUL. THE LUNA FIRM USED THE DOCTRINE VERY
SUCCESSFULLY IN TARUC VS PGRE ET AL AND EMBASSY CONCURS
IN REFTTEL REQUEST TO RETAIN LUNA IN THIS CASE.

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7. ACTION REQUESTED: APPROVAL OF TEXT OF EMBASSY
REPLY NOTE QUOTED IN PARA 5 ABOVE AND RETENTION OF LUNA FIRM.
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Message Attributes

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